

Access to

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ALL #
84-1692
SPECIAL

April 23, 1984

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

General Services Administration
Department of Justice
Central Intelligence Agency ✓
National Security Council
Department of the Treasury

SUBJECT: DOD views on H.R. 3987, a bill "To improve the preservation and management of Federal records, and for other purposes."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please provide us with your views no later than

4:00 P.M. TUESDAY, APRIL 24, 1984

Direct your questions to Gregory Jones (395-3856), of this office.

*Received at noon, 24 April.
Called in a "no objection".*

*Coordinated + confirmed reply
post facto with RMB/OIS/DDA +
Enclosures*

OGC/L+LD

cc: M. Chaffee
F. Reeder
J. Coffey

[Signature]
James C. Murr for
Assistant Director for
Legislative Reference

STAT

Honorable Jack Brooks
Chairman, Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Received OMB
4/23/84
1:00 PM

Dear Mr. Chairman:

Reference is made to H.R. 3987, 98th Congress, a bill "To improve the preservation and management of Federal records, and for other purposes." This letter is to present the views of the Department of Defense on the bill as ordered reported.

The Department of Defense is opposed to the enactment of H.R. 3987 for the reasons stated below.

Section 102 of H.R. 3987, as it adds a new § 2104(a) to 44 U.S.C., authorizes the Archivist of the United States to promulgate rules and regulations that must be adopted by each agency to conform its activities to the orders and directives prescribed by the Archivist. This provision could make agencies completely subject to the authority of the proposed Administration and the Archivist the sole arbiter of any conflict between the Administration and an agency. Further, the new § 2104(f) added to 44 U.S.C. by Section 102 of the bill broadens the Archivist's authority for access to Department records without approval from the Secretary. The Department is concerned that this provision might give personnel of the new Administration unrestricted access to highly classified and sensitive defense information.

The Department of Defense strongly objects to Section 204 of H.R. 3987, which would amend 44 U.S.C. § 3301 as it relates to the determination of whether a record is subject to the stringent retention requirements of the Records Disposal Act. Between September 1979 and February 1984 the Department of Defense has objected to four similar proposals which, like Section 204, would permit the Archivist to overrule determinations made by agency heads on whether specific records come within the purview of the Act. While the expertise

of the Archivist with regard to records appraisal and disposition is not questioned, there are occasions when the subject matter knowledge possessed only by the agency that originated or formerly owned certain records is critical to appraisal or preservation of those records. The advice and opinion of the National Archives and Records Service is sought by the Department of Defense in every case where it is necessary to determine the value or the disposition of a record. However, a combination of the best archival and subject matter opinion with respect to records value and disposition is superior to a unilateral opinion from one or the other area of expertise.

Section 204 of the bill also appears to neutralize or eliminate the discretionary authority of agency heads or the President for limiting access to classified National Security Information. The Department of Defense continues to maintain that access to highly sensitive information in the Executive Branch has traditionally and prudently been permitted only when there has been an indisputable "need-to-know." Although this need to know has included a minimal number of people with an administrative, as opposed to an operational, requirement to handle the information, such administrative people have been under the control of the agency head having jurisdictional responsibility for the information. Restricting access to information in this manner assures conformance to the Executive Order requirement that access to classified information should only be permitted when such access, "is consistent with the interests of national security."

Some information, although a relatively small amount, is extraordinarily sensitive. Such information is found in almost all Executive branch agencies, but particularly in the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, the National Security Agency, and the four

Military Services. Denial of access by National Archives appraisers and inspectors to these extraordinarily sensitive records would be of less consequence than the added risk of inadvertent disclosure of sensitive information that the proposed access would entail. It should be noted that Executive Order 12356 allows an agency head to deny access to certain information, even to the Information Security Oversight Office, when the agency head believes that access would pose an exceptional national security risk.

Sincerely,